

Before the
Federal Communications Commission
Washington, D.C. 20554

FILED/ACCEPTED

APR 16 2012

Federal Communications Commission
Office of the Secretary

In re)	
)	
MARITIME COMMUNICATIONS/LAND	)	EB Docket No. 11-71
MOBILE, LLC	)	File No. EB-09-IH-1751
	)	FRN: 0013587779
Participant in Auction No. 61 and Licensee of)	
Various Authorizations in the Wireless Radio)	
Services)	
)	
Applicant for Modification of Various	)	Application File Nos. 0004030479,
Authorizations in the Wireless Radio Services	)	0004144435, 0004193028, 0004193328,
	)	0004354053, 0004309872, 0004310060,
Applicant with ENCANA OIL AND GAS (USA),	)	0004314903, 0004315013, 0004430505,
INC.; DUQUESNE LIGHT COMPANY; DCP	)	0004417199, 0004419431, 0004422320,
MIDSTREAM, LP; JACKSON COUNTY	)	0004422329, 0004507921, 0004153701,
RURAL MEMBERSHIP ELECTRIC	)	0004526264, 0004636537,
COOPERATIVE; PUGET SOUND ENERGY,	)	and 0004604962
INC.; ENBRIDGE ENERGY COMPANY,)	
INC.; INTERSTATE POWER AND LIGHT)	
COMPANY; WISCONSIN POWER AND)	
LIGHT COMPANY; DIXIE ELECTRIC)	
MEMBERSHIP CORPORATION, INC.;)	
ATLAS PIPELINE – MID CONTINENT, LLC;)	
DENTON COUNTY ELECTRIC)	
COOPERATIVE, INC. , DBA COSERV)	
ELECTRIC; AND SOUTHERN CALIFORNIA)	
REGIONAL RAIL AUTHORITY)	
To: Marlene H. Dortch, Secretary		
Attn: Chief Administrative Law Judge Richard L. Sippel		

ENFORCEMENT BUREAU'S RESPONSE TO
REQUEST TO VACATE OR MODIFY

1. On April 6, 2012, the Presiding Judge issued *Order*, FCC 12M-22 (ALJ, rel. April 6, 2012) in the above-captioned proceeding, requiring Maritime Communications/Land Mobile,

No. of Copies rec'd 0+1
List ABCDE

LLC (Maritime) to submit financial statements for each of Maritime's equity owners.¹ The Presiding Judge based his Order on Maritime's repeated protests that it could not respond fully to the discovery demands of the Enforcement Bureau (Bureau) because of "a lack of the necessary financial resources."² Indeed, Maritime has represented to the Presiding Judge for months that it "lacks the financial resources and staff to visit or otherwise verify the specific operational status of each of its [station] locations."³ Now, after the Presiding Judge has ordered Maritime to actually produce financial information to support its claims, Maritime apparently is doing an about-face and abandoning its claim that it lacks the financial wherewithal to comply with the Bureau's discovery requests.⁴ Instead, Maritime *now* argues it has already answered the disputed interrogatories and that any further investigation will not elicit relevant or useful information.⁵ As discussed in detail below, the record shows this is clearly not the case.

2. The disputed interrogatories – Interrogatory Nos. 13, 14 and 15 – seek the following information: whether Maritime's site-based stations are currently operating (*i.e.*, on-the-air, transmitting a signal) and, if not, the date they went off-the-air and why. These inquiries are relevant to determining whether operations at any of Maritime's stations have been permanently discontinued as set forth in Issue (g) of the HDO. Indeed, before the Presiding Judge can even reach the legal argument of whether any discontinuance of operations should be considered permanent, he must know whether operations have even been discontinued. Thus,

¹ See Order, FCC 12M-22 (ALJ, rel. April 6, 2012) and Addendum (ALJ, rel. April 11, 2012).

² See Order, FCC 12M-22 (ALJ, rel. April 6, 2012).

³ See Maritime's Amended and Further Supplemental Response to Interrogatories, filed on March 16, 2012 (Amended Response), at response to Interrogatory No. 14 on page 5. See also Maritime's Reply Per Order (FCC 12M-21), filed on March 28, 2012, at pages 5 and 6; Maritime's Status Report on Discovery and Response to the Enforcement Bureau's Request for the Presiding Judge's Intervention, filed on March 22, 2012, at page 5.

⁴ See Maritime's Request That The Presiding Judge's April 16, 2012 Order (FCC 12M-22) Be Vacated or Modified, filed on April 12, 2012 (Request), at page 7. Maritime specifically states therein that it no longer asks "to be excused from responding to interrogatories based on its financial condition."

⁵ See *id.*

the first inquiry necessarily must be whether each of Maritime's site-based stations is currently operating. And yet, Maritime has not provided this most basic of information – which every Commission licensee should know – for many of its stations:

- In its March 16, 2012 interrogatory responses, Maritime stated that **“it does not affirmatively know the status of stations that it has not been able to visit.”**⁶ Thus, in the Revised Table 2 it attached to those responses and to which it referred in response to Interrogatory Nos. 13 and 15, Maritime identified 22 stations with Status Code “U – Maritime not sure of current operational status.”⁷
- Maritime further conceded that, for “the stations listed with codes G or G1... for authority that [it asserts] is now wholly subsumed within the scope of Maritime's geographic licenses ... [it] **has not attempted to verify the status.**”⁸ This accounted for an additional 108 stations.⁹
- Maritime subsequently confirmed that **“it does not have sufficient information to allow it to swear under oath to the current operational status”** of its “U” stations or of its subsumed stations without conducting on-site evaluations – which it has refused to do.¹⁰

Thus, for 130 of its stations, Maritime acknowledges that it has not provided *any* information as to their operational status. In addition, for 12 of its stations, Maritime has identified only that they are subject to a spectrum lease.¹¹ It has provided no discovery as to whether any of these stations are actually operating, and if not, for how long and why. Surely as the lessor, Maritime is in a position to easily obtain this information and provide it to the Bureau. Maritime offers no

⁶ See Amended Response at response to Interrogatory No. 13 on page 4 and at Revised Table 2, page 5. Three days later, Maritime filed an errata to these interrogatory responses which also included a Revised Table 2. See also Errata and Additional Information Regarding Amended and Further Supplemental Response to Interrogatories, filed March 19, 2012, (Errata) at Revised Table 2, page 5.

⁷ See Amended Response at Revised Table 2, page 5; Errata at Revised Table 2, page 5.

⁸ See Amended Response at response to Interrogatory No. 13 on page 5.

⁹ See Amended Response at Revised Table 2 and Errata at Revised Table 2.

¹⁰ See Maritime's Reply Per Order (FCC 12M-21), filed on March 28, 2012, at page 6. See also Maritime's Status Report on Discovery and Response to the Enforcement Bureau's Request for the Presiding Judge's Intervention, filed on March 22, 2012, at page 3: “[i]n response to inquiries regarding the current operational status of the subsumed incumbent licenses ... Maritime ... is not certain of their current status and has made no effort to verify their status.”

¹¹ See Amended Response at Revised Table 2 and Errata at Revised Table 2 at Status Code “L.”

explanation for this deficiency. In its April 6, 2012 Order (FCC 12M-22), the Presiding Judge concluded that the Bureau is entitled to know which of Maritime's licensed facilities are currently in operation.¹² For Maritime to now represent to the Presiding Judge that it has responded to the disputed interrogatories is outrageous.

3. It is even more outrageous for Maritime to suggest that on-site inspections of its 130 stations "will not . . . provide any useful or relevant information."¹³ Such inspections will clearly confirm, at the very least, whether the operations of any of these stations have been discontinued. If operations have been discontinued, then, in response to Interrogatory Nos. 14 and 15, Maritime is required to provide information as to how long any such stations have been off-the-air and the reasons why. Any such discovery as to how long the operations have been discontinued and the reasons why they have been discontinued is plainly relevant to determining whether such discontinuance should be deemed permanent.¹⁴

4. The Presiding Judge first Ordered Maritime to respond to Interrogatory Nos. 13, 14 and 15 by February 6, 2012. More than two months later – and just over a month from the May 26, 2012 deadline for the close of discovery on Issue (g)¹⁵ – the Bureau has no more information concerning the permanent discontinuance of Maritime's stations than it did when it first requested the discovery in December 2011. Without this discovery, the Bureau has not been able to move this case forward – it cannot proceed with depositions of Maritime or determine if additional written discovery is needed. The case is at a stand-still because of Maritime's refusal

¹² See Order, FCC 12M-22 (ALJ, rel. April 6, 2012).

¹³ See Request at 7.

¹⁴ See *In the Matter of Mobex Network Services, LLC*, Memorandum and Order, 25 FCC Rcd. 3390 (March 16, 2010) (concluding that an AMTS station was cancelled automatically for permanent discontinuance when there had been no equipment at that location for a number of years); see also *In the Matter of Applications of Northeast Utilities Service Co.*, Memorandum and Order, 24 Rcd. 3310, 3311 (WTB, March 17, 2009) (recognizing that claims of permanent discontinuance for AMTS licenses are evaluated on a case-by-case basis).

¹⁵ See Order, FCC-12M-7 (ALJ, rel. Jan 27, 2012).

to produce information relevant to Issue (g).

5. Since Maritime insists it is no longer relying on an alleged lack of financial resources as an excuse for not producing this discovery, the Bureau implores the Presiding Judge to finally put an end to Maritime's dilatory tactics and to issue an order compelling Maritime either (1) to concede that the 142 stations in dispute are not operating and have not operated since Maritime acquired them or (2) to provide full and complete responses to the disputed interrogatories, affirmed under oath, as follows:

- A chart, organized by call sign and location, indicating with a "yes" or "no" whether each location is currently on-the-air, *i.e.*, transmitting a signal;
- A chart, organized by call sign and location, indicating with a "yes" or "no" whether each location has been continuously on-the-air since the date that location was constructed;
- A chart, organized by call sign and location, indicating with a "yes" or "no" whether the operations of the stations identified in Table 3 of Maritime's Errata resumed and the date on which any such operations resumed; and
- For any call sign and location which Maritime indicates is not currently on-the-air, a chart that specifies the date that call sign or location went off the air and the reason why.

Respectfully submitted,

P. Michele Ellison
Chief, Enforcement Bureau



Pamela S. Kane
Deputy Chief
Investigations and Hearings Division
Enforcement Bureau

Brian J. Carter
Attorney
Investigations and Hearings Division
Enforcement Bureau

Federal Communications Commission
445 12th Street SW
Room 4-C330
Washington, D.C. 20554
(202) 418-1420
April 16, 2012

CERTIFICATE OF SERVICE

Makia Day, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 16th day of April, 2012, sent by first class United States mail copies of the foregoing "ENFORCEMENT BUREAU'S RESPONSE TO REQUEST TO VACATE OR MODIFY to:

The Honorable Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554 (by hand, courtesy copy)

Sandra DePriest
Maritime Communications/Land Mobile LLC
218 North Lee Street
Suite 318
Alexandria, Virginia 22314

Dennis C. Brown
8124 Cooke Court
Suite 201
Manassas, VA 20109
Counsel for Maritime Communications/Land Mobile LLC

Jeffrey L. Sheldon
Fish & Richardson P.C.
1425 K Street, N.W.
11th Floor
Washington, D.C. 20005
Counsel for Puget Sound Energy, Inc

Robert J. Miller
Gardere Wynne Sewell LLP
1601 Elm Street
Suite 3000
Dallas, Texas 75201
Counsel for Denton County Electric Cooperative, Inc. d/b/a CoServ Electric

Jack Richards
Wesley Wright
Keller & Heckman LLP
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
Counsel for Atlas Pipeline – Mid Continent LLC; DCP Midstream, LP; Enbridge Energy Co., Inc.; EnCana Oil and Gas (USA), Inc.; and Jackson County Rural Membership Electric Cooperative

Charles A. Zdebski
Gerit F. Hull
Eckert Seamans Cherin & Mellott, LLC
1717 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Counsel for Duquesne Light Co.

Paul J. Feldman
Harry F. Cole
Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street – 11th Floor
Arlington, VA 22209
Counsel for Southern California Regional Rail Authority

Matthew J. Plache
Albert J. Catalano
Catalano & Plache, PLLC
3221 M Street, N.W.
Washington, D.C. 20007
Counsel for Dixie Electric Membership Corp.
Counsel for Pinnacle Wireless Corp.

Robert J. Keller
Law Offices of Robert J. Keller, P.C.
P.O. Box 33428
Washington, D.C. 20033
Counsel for Maritime Communications/Land Mobile LLC

SkyTel
c/o ATLIS Wireless LLC
2509 Stuart Street
Berkeley, CA 94705
Attn: J. Stobaugh

Robert H. Jackson
Marashlian & Donahue, LLC
The Comm Law Group
1420 Spring Hill Road
Suite 401
McLean, VA 22102


Makia Day